

# **ATTACHMENT C**

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8 *Attorneys for Defendant*  
9 *Google Inc.*

10  
11 **UNITED STATES DISTRICT COURT**  
12 **NORTHERN DISTRICT OF CALIFORNIA**  
13 **SAN JOSE DIVISION**

14 IN RE: HIGH-TECH EMPLOYEE  
ANTITRUST LITIGATION

15 THIS DOCUMENT RELATES TO:  
16 ALL ACTIONS

**Master Docket No. 11-CV-2509-LHK**

**DECLARATION OF LEE H. RUBIN IN  
SUPPORT OF DEFENDANTS'  
SUPPLEMENTAL BRIEF IN  
CONNECTION WITH PLAINTIFFS'  
MOTION FOR APPLICATION OF THE  
PER SE STANDARD**

17  
18  
19  
20  
21 I, Lee H. Rubin, declare as follows:

22 1. I am an attorney with the law firm of Mayer Brown LLP, counsel for Defendant  
23 Google, Inc. ("Google") in the above-captioned matter. I am admitted to practice law before this  
24 Court. I submit this declaration in support of Defendants' Supplemental Brief in Connection  
25 with Plaintiffs' Motion for Application of the Per Se Standard that is being filed concurrently  
26 herewith. As an attorney involved in the defense of this action, unless otherwise stated, I have  
27 personal knowledge of the facts stated in this declaration and if called as a witness, I could and  
28 would competently testify to them.

2. Attached hereto as Exhibit 1 is a true and correct copy of the document produced by Google with Bates number GOOG-HIGH-TECH-00023299.

3. Attached hereto as Exhibit 2 is a true and correct copy of the document produced by Google with Bates number GOOG-HIGH-TECH-00058557.

4. Attached hereto as Exhibit 3 is a true and correct copy of the document produced by Google with Bates number GOOG-HIGH-TECH-00059908.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on September 18, 2014 in Palo Alto, California. /s/ *Lee H. Rubin*  
Lee H. Rubin

# **EXHIBIT 1**

From: Arnon Geshuri.  
 To: [ - ] jennybyrne@google.com; Arnon Geshuri.  
 Cc: [ - ] .  
 Bcc: [ - ] .  
 Subject: Re: Fwd: Do Not Call List.

Legal does not have to be involved. It is a business decision. Please have Karine remove the companies from the list and repost.

-----Original Message-----

From: jennybyr@google.com  
 To: Arnon Geshuri  
 Sent: Fri Dec 01 12:35:25 2006  
 Subject: Fwd: Do Not Call List

Arnon,

We need some guidance on this....

----- Forwarded message -----

From: Sarah Ryan <sgryan@google.com <mailto:sgryan@google.com> >  
 Date: Dec 1, 2006 11:59 AM  
 Subject: Re: Do Not Call List  
 To: Karine Karpati <kkarpati@google.com>  
 Cc: Jenny Byrne <jennybyrne@google.com <mailto:jennybyrne@google.com> >

Just wanted to clarify one point as I was corrected by Jill Hutchital and Dan Zigmond...

According to Jill, we never actually had an agreement with Invidi. She and/or Dan asked for their inclusion on the "do not call" list as a courtesy. They no longer feel this courtesy is necessary as the relationship has since changed.

At one time, we were in acquisition discussions with Invidi. Even after the acquisition didn't happen, we were in a technical partnership for a trial. Invidi is no longer participating in that trial.

Given this information, is it still necessary to consult Legal to request removal? And if so, who should present this information to Legal?

Thanks,

Sarah

On 11/30/06, Karine Karpati <kkarpati@google.com> wrote:

> I think Legal would have to approve removing someone from the list --  
 > someone like Amy Lambert.

>

>

> On 11/30/06, Sarah Ryan <sgryan@google.com> wrote:

> > Jenny and Karine,

> >

> > I apologize if you've already received this email. I'm sending a new  
 > > note in case my last email got lost in that long thread we had going.

> >

> > Jenny - Have you been able to make a final determination about

> > Invidi's placement on the Do Not Call list?

> >

> > Karine - What is the procedure for requesting removal of a company  
> > from the list? For instance, if the primary Googler involved in  
> > creating the agreement with the "do not call" company states that the  
> > partnership no longer exists, how can he/she go about having the  
> > company removed from the "do not call" list?

> >

> > Thanks,

> >

> > Sarah Ryan

> > Engineering Leadership Recruiting

> > Google, Inc.

> > (650) 253-0012

> > sgryan@google.com

> >

>

>

>

> --

> Karine Karpati

> Staffing Programs Manager

> 1600 Amphitheatre Pkwy

> Mountain View, CA 94043

>

>

>

--  
Sarah Ryan

Engineering Leadership Recruiting

Google, Inc.

(650) 253-0012

sgryan@google.com <mailto:sgryan@google.com>

>

>

>

--  
Jenny Byrne

Assistant to Arnon Geshuri

Google Staffing

1550 Plymouth Street

Mountain View, CA 94040

650-253-8880

www.google.com <http://www.google.com>

## **EXHIBIT 2**

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**From:** Kirsten Manning <kirsten@google.com> on behalf of Kirsten Manning  
**Sent:** Wednesday, March 30, 2005 4:39 PM  
**To:** Arnon Geshuri  
**Subject:** Fwd: Call in numbers for Friday's call

FYI...

He looks interesting!

Kirsten

Begin forwarded message:

> From: "Patrick Harte" <patrick.harte@asaripartners.com>  
> Date: March 30, 2005 11:14:04 AM EST  
> To: "Kirsten Manning" <kirsten@google.com>  
> Cc: "Karrin Nicol" <KNicol@nvidia.com>  
> Subject: RE: Call in numbers for Friday's call  
>  
> Hi Kirsten - Please find attached the cv of [Redacted]  
> [Redacted] at Oracle. Both Karrin and I have spoken with [Redacted] and we  
> are excited about his candidacy for this role. As we discussed  
> yesterday due to time constraints we will not get an opportunity to  
> meet with [Redacted] before you arrive, however, we would recommend that  
> you meet with him, [Redacted] is available next Tuesday in London after  
> 12pm, please let me know what time will work for you and who [Redacted]  
> will be meeting.  
>  
> Kind Regards  
>  
> Patrick Harte  
> asaripartners  
>  
> Cell: +44 (0)7748 770811  
> Tel: +44 (0)8701 999210  
> Fax: +44 (0)8707 626731  
> Mail: patrick.harte@asaripartners.com  
> <mailto:patrick.harte@asaripartners.com>  
> Web: www.asaripartners.com <http://www.asaripartners.com>  
>  
> This electronic message contains information from asaripartners  
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> the use thereof. We reserve the right to monitor all e-mail  
> communications through our internal and external networks

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>

> -----Original Message-----

> From: Kirsten Manning [mailto:kirsten@google.com]

> Sent: 29 March 2005 18:03

> To: Patrick Harte

> Subject: Re: Call in numbers for Friday's call

>

>

> Yes, his email is arnnon@google.com. You can also send it to his admin

> Megan Lee at mmlee@google.com.

>

> Thanks,

> Kirsten

>

>

>

> On Mar 29, 2005, at 11:31 AM, Patrick Harte wrote:

>

>> Hi Kirsten - Do you have an e-mail address for Arnnon so I can send a

>> soft copy?

>>

>> Kind Regards

>>

>> Patrick Harte

>> asaripartners

>>

>> Cell: +44 (0)7748 770811

>> Tel: +44 (0)8701 999210

>> Fax: +44 (0)8707 626731

>> Mail: patrick.harte@asaripartners.com

>> <mailto:patrick.harte@asaripartners.com>

>> Web: www.asaripartners.com <http://www.asaripartners.com>

>>

>> This electronic message contains information from asaripartners

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>> communications through our internal and external networks

>>

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>>

>>

>> -----Original Message-----

>> From: Kirsten Manning [mailto:kirsten@google.com]

>> Sent: 29 March 2005 17:28

>> To: Karrin Nicol; Patrick Harte

>> Cc: 'Arnon Geshuri'

>> Subject: Re: Call in numbers for Friday's call

>>

>>

>>> Hi Kirsten - small admin query where do we send the invoice for our  
>>> retainer to?

>>

>> Send it to:

>>

>> Arnon Geshuri

>> Google Inc.

>> 1600 Amphitheatre Parkway

>> Building 47

>> Mountain View, CA 94043

>> phone: 650-623-4000

>>

>> I just spoke with Arnon about the candidates that you sent us. He  
>> said that we should not target anyone from Genentech, Intel, AOL or  
>> Apple at this time because of business relationships that we have  
>> with them at this time. So sorry to let you know this now but thought  
>> that it will rule out some people and allow you to focus on the  
>> others.

>>

>> I look forward to speaking with people and meeting people next week.  
>> All the best with your search!

>>

>> Thanks again,

>> Kirsten

>>

>> Kirsten Manning | Manager, International Staffing | Google Inc. | New

>> York | 212.994.4893 |

>>

>>

>>

>> \_\_\_\_\_  
>> This email has been scanned by NetIntelligence

>> <http://www.netintelligence.com/email>

>>

>>

> Kirsten Manning | Manager, International Staffing | Google Inc. | New  
> York | 212.994.4893 |  
>  
>  
> \_\_\_\_\_  
> This email has been scanned by NetIntelligence  
> <http://www.netintelligence.com/email>

## **EXHIBIT 3**

---

**From:** Arnon Geshuri <arnnon@google.com> on behalf of Arnon Geshuri  
**Sent:** Friday, October 10, 2008 10:55 PM  
**To:** Kristin Kassaei  
**Cc:** Matthew Papakipos; Henry Bridge  
**Subject:** Re: [client3d-tt] Problems running samples and initial feedback

Historically, we have not added anything to our contracts in regards to a non-solicit.

Instead, we place the name of the firm (or individual employees) on our Do Not Call list and distribute that to the staffing team. That has taken care of the issue. The staffing team knows not to touch anyone on the list.

On Fri, Oct 10, 2008 at 3:48 PM, Kristin Kassaei <[kkassaei@google.com](mailto:kkassaei@google.com)> wrote:  
+ Arnon

Hi Matt, we certainly have agreements of this sort in place with other companies.

Arnon, to solve for this, can we simply add this company to our Do Not Call list? Do we need any other special agreement?

Thanks!  
Kristin

On Fri, Oct 10, 2008 at 3:44 PM, Matthew Papakipos <[papakipos@google.com](mailto:papakipos@google.com)> wrote:  
hi kristen,

we have an outside developer testing our software.  
he'd like to put us in touch with some of his engineers,  
but wants an anti-poaching agreement in place before we do this  
so that we dont hire his employees.  
can we do this?  
have we done it before?

thanks,

-matt

-----  
Matthew Papakipos  
Engineering Director  
Google  
mail: [papakipos@google.com](mailto:papakipos@google.com)  
admin: [benbayer@google.com](mailto:benbayer@google.com)

----- Forwarded message -----

From: **Denis Fung** <[FungD@page44.com](mailto:FungD@page44.com)>  
Date: Fri, Oct 10, 2008 at 3:28 PM

Subject: RE: [client3d-tt] Problems running samples and initial feedback  
To: Matthew Papakipos <[papakipos@google.com](mailto:papakipos@google.com)>  
Cc: [client3d-tt@google.com](mailto:client3d-tt@google.com)

Yes, it was IE. I still have some issues, but it seems like a fresh Flash install is in order.

I understand clarification about javascript. C++ is obviously the prevailing language for most console game developers. I don't know of any development teams (including those at EA, Activision, Sony, etc) that have javascript programming resources at their disposal. It's obviously not the javascript usage itself; leveraging existing codebases that we studios have evolved over the years (that enable us to deliver product with sane cost structures) becomes a real impediment to having interest in developing game content of substantial sophistication.

That being said, client3D makes developing simpler applications, like social networking games driven by advertisement revenue, more enticing to us because we can take advantage of our 3D art and animation resources.

One question: How do I get one of my employees to look at this in conjunction with me? I have staff that could provide more in depth feedback, but being local to Google, and having actually persuaded a hire to join my company over Google, there's a serious possibility of poaching. Is there a non-poaching agreement that could be entered to protect my company's interest that would enable me to loop in select employees?

---

**From:** Matthew Papakipos [<mailto:papakipos@google.com>]  
**Sent:** Friday, October 10, 2008 1:54 PM  
**To:** Denis Fung  
**Cc:** [client3d-tt@google.com](mailto:client3d-tt@google.com)  
**Subject:** Re: [client3d-tt] Problems running samples and initial feedback

hi denis,

the screen shot didn't come through. could you resend?  
i'm guessing you're trying to run in IE.  
the version you have does not support IE.  
(it's coming soon.)  
the version you have should run fine in firefox.

i wanted the clarify:  
the version of sw you have runs on javascript (not java).  
that said, your comments about language choice still clearly apply.  
it sounds like you'd prefer c++.  
we appreciate the feedback.

best,

-matt

-----  
Matthew Papakipos  
Engineering Director  
Google  
mail: [papakipos@google.com](mailto:papakipos@google.com)  
admin: [benbayer@google.com](mailto:benbayer@google.com)

On Thu, Oct 9, 2008 at 12:53 PM, Denis Fung <[FungD@page44.com](mailto:FungD@page44.com)> wrote:

I'm not sure this is the appropriate email address, but I cannot run any of the samples. For the teapot, I get an empty window in the browser window where the output should be. Attached is a screenshot. I suspect that there is an ActiveX restriction. Note that the rest have similar problems with the exception of Prince IO, which gets stuck at the loading screen (after the 2D-presentation is done).

Also, this is just preliminary feedback, but I thought I would pass it along:

- Independent developers don't always have the latest versions of expensive packages like Maya or 3DSMax. It is probably worth supporting older versions of the software to increase the likelihood that you get developers on board. That being said, we have Maya 2008, so this is not a problem for our studio.
- As a developer for console games (Wii, 360, PS2, PSP, and PS3), we don't use Java at all. All our cross platform code runs in C++, so the strategic question for us (ignoring the larger question of financial incentives) is how difficult is it to bring our content over to the browser world. In general, translating artist-authored content seems straight-forward (we are collada based), but functional code seems more problematic.

Thanks,  
Denis Fung  
Director of Development  
Page 44 Studios, LLC

-----~  
You received this message because you are subscribed to the Google Groups "client3d-tt" group.  
To post to this group, send email to [client3d-tt@google.com](mailto:client3d-tt@google.com)  
To unsubscribe from this group, send email to [client3d-tt+unsubscribe@google.com](mailto:client3d-tt+unsubscribe@google.com)  
For more options, visit this group at <http://groups.google.com/a/google.com/group/client3d-tt?hl=en>  
-----~

--  
Kristin Kassaei - Engineering Recruiting - Google - 650-253-6636  
[code.google.com/codejam](http://code.google.com/codejam)